

## Calendar No. 62

104TH CONGRESS }  
1st Session }

SENATE

{ REPORT  
104-39

### DAYTON AVIATION HERITAGE COMMISSION

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APRIL 7 (legislative day, APRIL 5), 1995.—Ordered to be printed

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Mr. MURKOWSKI, from the Committee on Energy and Resources,  
submitted the following

### REPORT

[To accompany S. 392]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 392) to amend the Dayton Aviation Heritage Preservation Act of 1992 with regard to appointment of members of the Dayton Aviation Heritage Commission, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### PURPOSE OF THE MEASURE

The purpose of S. 392 is to make a technical correction to the Dayton Aviation Heritage Protection Act of 1992 by clarifying the Secretary of the Interior's authority to make appointments to the Advisory Commission.

#### BACKGROUND AND NEED

The appointment procedure for the Dayton Aviation Heritage National Historic Site advisory commission (as described in the Dayton Aviation Heritage Preservation Act of 1992 (Public Law 102-419)), while identical to the appointment procedure for several other park advisory commissions, has been identified by the Department of Justice as raising potential Constitutional problems. The Dayton enabling legislation provided that non-Federal members of the advisory commission were to be appointed by the Secretary of the Interior "from among recommendations" submitted by various State and local entities. The concern has been raised that this language limits the President's ability to control an Executive Branch commission, in violation of the Appointments clause of the

Constitution. S. 392 clarifies that the non-Federal members of the advisory commission are to be appointed “after consideration of recommendations” submitted by the various entities, consistent with Constitutional requirements.

#### LEGISLATIVE HISTORY

Senator Glenn introduced S. 392 on February 10, 1995. Similar legislation, H.R. 606 was passed by the House of Representatives, on March 29, 1995.

In the 103d Congress, Congressman Hall introduced H.R. 3559 in the House of Representatives on November 19, 1993. The House Committee on Natural Resources favorably reported the bill to the House on September 28, 1994, as amended, but no further action was taken.

At the business meeting on March 29, 1995, the Committee on Energy and Natural Resources ordered S. 392 favorably reported, without amendment.

#### COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in upon business session on March 29, 1995, by a unanimous vote of a quorum present, recommends that the Senate pass S. 392 without amendment.

The roll call vote on reporting the measure was 20 yeas, 0 nays, as follows:

YEAS	NAYS
Mr. Murkowski	
Mr. Hatfield <sup>1</sup>	
Mr. Domenici	
Mr. Nickles <sup>1</sup>	
Mr. Craig	
Mr. Campbell <sup>1</sup>	
Mr. Thomas <sup>1</sup>	
Mr. Kyl <sup>1</sup>	
Mr. Grams	
Mr. Jeffords <sup>1</sup>	
Mr. Burns <sup>1</sup>	
Mr. Johnston	
Mr. Bumpers	
Mr. Ford	
Mr. Bradley	
Mr. Bingaman	
Mr. Akaka	
Mr. Wellstone <sup>1</sup>	
Mr. Heflin <sup>1</sup>	
Mr. Dorgan	

<sup>1</sup> Indicates voted by proxy.

#### SUMMARY OF THE MEASURE

S. 392 changes the manner in which the non-Federal members of the Dayton Aviation Heritage Advisory Commission are appointed. The original law provided for the Secretary of the Interior

to appoint several non-Federal members to the Commission “from among recommendations” submitted by various State and local entities. To resolve the Constitutional concerns, S. 392 provides that the members shall be appointed by the Secretary “after consideration of recommendations” submitted by the respective entities.

#### COST AND BUDGET CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, April 5, 1995.*

Hon. Frank H. Murkowski,  
*Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 392, a bill to amend the Dayton Aviation Heritage Preservation Act of 1992 with regard to appointment of members of the Dayton Aviation Heritage Commission, and for other purposes. S. 392 was ordered reported by the Senate Committee on Energy and Natural Resources on March 29, 1995. Enactment of this legislation would result in no cost to the Federal Government or to State or local governments. Because enactment of S. 392 would not affect direct spending or receipts, pay-as-you-go procedures would not apply.

S. 392 would amend the Dayton Aviation Heritage Preservation Act of 1992 (P.L. 102-419) to clarify the power of the Secretary of Interior to make appointments to the advisory commission that was created by that act. Under the bill's amendments to P.L. 102-419, the Secretary need only consider the recommendations of others in making such appointments and is not limited by those recommendations.

On February 22, 1995, CBO prepared a cost estimate for H.R. 606, a bill to amend the Dayton Aviation Heritage Preservation Act of 1992, and for other purposes, as ordered reported by the House Committee on Resources. The two estimates are identical.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deborah Reis.

Sincerely,

JAMES L. BLUM  
(For June E. O'Neill, *Director*).

#### REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 392. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 392, as ordered reported.

#### EXECUTIVE COMMUNICATIONS

On March 24, 1995, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth Executive agency recommendations on S. 392. These reports had not been received at the time the report on S. 392 was filed. When these reports become available, the chairman will request that they be printed in the Congressional Record for the advice of the Senate.

#### CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 392, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

#### SECTION 201 OF THE DAYTON AVIATION HERITAGE PRESERVATION ACT OF 1992

##### SEC. 201. DAYTON AVIATION HERITAGE COMMISSION.

(a) \* \* \*

(b) MEMBERSHIP.—The Commission shall consist of 13 members as follows:

(1) 3 members appointed by the Secretary, who shall have demonstrated expertise in aviation history, black history and literature, aviation technology, or historic preservation, at least one of whom shall represent the National Park Service.

(2) 3 members appointed by the Secretary [from recommendations] *after consideration of recommendations* submitted by the Governor of the State of Ohio, who shall have demonstrated expertise in aviation history, black history and literature, aviation technology, or historic preservation, at least one of whom shall represent the Ohio Historical Society.

(3) 1 member appointed by the Secretary of Defense, who shall represent Wright-Patterson Air Force Base.

(4) 3 members appointed by the Secretary [from recommendations] *after consideration of recommendations* submitted by the City Commission of Dayton, Ohio, at least one of whom shall reside near the core parcel of the park (as described in section 101(b)(1)).

(5) 1 member appointed by the Secretary [from recommendations] *after consideration of recommendations* submitted by the Board of Commissioners of Montgomery County, Ohio.

(6) 1 member appointed by the Secretary [from recommendations] *after consideration of recommendations* submitted by the Board of Commissioners of Greene County, Ohio.

(7) 1 member appointed by the Secretary [from recommendations] *after consideration of recommendations* submitted by the City Council of Fairborn, Ohio.

